THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.30412 of 1998

Dated: 28.03.2007

Between:

T.C.S.Godavari Khani, rep., by its President
Balaswamy Goud, S/o Rajaiah

..... PETITIONER

AND

Assistant Commissioner of Prohibition and Excise,
Karimnagar District and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.30412 of 1998

ORDER:

Petitioner, which is a toddy tappers cooperative society, seeks a mandamus declaring the order of the second respondent dated 12.10.1998 directing it to admit respondents 4 to 16 as its members as arbitrary and illegal and violative of the provisions of the Andhra Pradesh Cooperative Societies Act, 1964 (for short "the Act").

The case of the petitioner society is that respondents 4 to 16, who are ineligible to become members of the petitioner society, made an application to the Government seeking membership in the petitioner society directly, without making any application to it under Section 19 of the Act. On the basis of which, the first respondent, without issuing any notice and without communicating the copy of the said application,

passed an order dated 24.09.1996 directing the petitioner to admit respondents
4 to 16 as its members. Challenging the same, the petitioner filed W.P.No.3123 of 1997 and this Court allowed the said writ petition on 19.02.1997 holding that the first respondent has no jurisdiction to pass the said order, and accordingly quashed the order of the first respondent dated 24.09.1996.

Subsequently, respondents 4 to 16 made a representation to the third respondent seeking membership into the petitioner society, and on advice of the third respondent, vide letter dated 14.08.1998, respondents 4 to 16 approached the second respondent. Now the petitioner alleges that without issuing any notice and without seeking any opinion from it, the second respondent passed the impugned order in exercise of his powers under Section 66 of the Act directing the petitioner to admit respondents 4 to 16 as its members and provide necessary allotment of the ration. Hence, this writ petition.

A detailed counter is filed on behalf of the respondents 1 to 3. It is stated in the counter that respondents 4 to 16 and others made a representation dated 23.11.1995 to the Chief Minister of Andhra Pradesh marking copies to the Superintendent of Prohibition and Excise, Karimnagar and to the petitioner. Accordingly, the first respondent directed the Station House Officer, Godavarikhani to conduct tapping test, who, in turn, conducted the test on 29.03.1996 and submitted a report stating that respondents 4 to 16 qualified in the test. Accordingly, after fulfillment of the required formalities, such as remittance of requisite share capital of Rs.10/- and entrance fee by each applicant, the first respondent by his order dated 29.04.1996 directed the petitioner to admit them as its members. However, the petitioner

complained to have been dodging the matter. Subsequently the unofficial respondents approached the second respondent as per the directions of the third respondent seeking appropriate directions to the petitioner for admission into it. Accordingly, after thorough examination of the representation of the unofficial respondents and other material available on record, the second respondent passed the impugned order as per the relevant provisions of law. Hence, it is concluded that there is no illegality in the impugned order.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise appearing on behalf of respondents 1 to 3.

It is not in dispute that power under Section 19 of the Act is not delegated to the functional registrar under G.O.Ms.No.234 dated 03.04.1979. Therefore, respondents 1 to 3 are not competent to direct the petitioner to admit anybody as its members directly, but only on a representation to the society seeking membership and after holding necessary enquiry, it is for the society either to admit or reject them. In the instant case, the second respondent has no jurisdiction to direct the petitioner to admit the unofficial respondents as its members. Therefore, this Court has no hesitation to hold that the impugned order is liable to be set aside. However, as it is stated in the counter that the unofficial respondents gave a representation to the petitioner society and the petitioner is intentionally dodging the matter without passing any orders, this Court deems it fit and proper to direct the unofficial respondents to give a fresh representation to the society.

Accordingly, the writ petition is allowed setting aside the impugned order dated 12.10.1998, and respondents 4 to 16 are hereby directed to give a representation to the petitioner claiming membership into the

society, within a period of four weeks from the date of receipt of a copy of this order, and on such application being made, the petitioner shall pass appropriate orders within a period of four weeks thereafter. There shall be no order as to costs.

28.03.2007

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